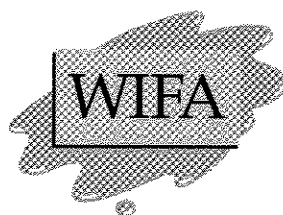


Hiring an Engineering Firm Step-by-Step

Presented by



**Water Infrastructure
Finance Authority of Arizona**

and



ENTRANCO

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The Water Infrastructure Finance Authority of Arizona expresses appreciation to:



ENTRANCO

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Phoenix, Arizona 85020

for preparation of this engineering guidance document.



Water Infrastructure Finance Authority of Arizona



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Introduction

Background

In response to numerous requests for assistance in selecting consulting engineering firm services, the **Water Infrastructure Finance Authority** (WIFA), in conjunction with **Entranco**, developed this engineering firm selection guidance to assist cities, districts, towns, water and wastewater systems (henceforth “communities”) to select and retain professional engineering firm services.

Purpose of the guidance document

This guidance document enables communities to obtain appropriate engineering firm services for their water and wastewater infrastructure projects.

Who benefits from using the guidance document

Communities throughout Arizona can use this guidance document to implement projects in a timely manner. Anyone involved with capital improvements will benefit from using this document including:

- Procurement Managers and Staff
- Finance Staff
- Water System Personnel
- Wastewater System Personnel
- Engineering firms

What the guidance document will do

When selecting an engineering firm for a project, communities should follow through the selection process outlined in this guidance document. This guidance document explains recommended and required steps to select and retain an engineering firm. A sequence diagram is provided at **Appendix A**.





Step-by-Step Process to Hire an Engineering firm

Step 1: Review Local Procurement Codes

In order to comply with applicable procurement requirements, the community needs to review all federal, state and local (i.e. cities, towns or counties, etc.) procurement codes before they begin the process of hiring an engineering firm.

Actual procurement laws and rules will depend on the type of organization or entity initiating the procurement -- municipal, improvement district, homeowners association, private entity, etc. **Please note: This document does not attempt to address the details of procurement law.**

WIFA strongly recommends that the user review the federal, state, and local procurement codes and regulations or seek legal council on these matters, prior to beginning the process of hiring an engineering firm.

Step 2: Generate Scope of Work and Project Description

The community needs to generate a description of the project to advertise the project and, thus, increase the number of interested engineering firms and competition for the project. With increased notice and competition, the community is more likely to obtain a qualified engineering firm.

Within the scope of work and project description, the community should include:

- ☐ Contact information
- ☐ Description of the project
- ☐ Location of the project
- ☐ Purpose and objectives of the project
- ☐ Key schedule milestones
- ☐ Grading/selection process for the project
- ☐ Guidelines for engineering firms to respond to Request for Qualifications (RFQ) or a Request for Proposal (RFP)
- ☐ Funding sources being considered by the community to finance the project

Appendix B is a sample project advertisement.

Step 3: Advertise Scope of Work

The community should advertise for the project in the following places:

- | | |
|--|---|
| <input type="checkbox"/> Newspaper | <input type="checkbox"/> E-Mail Message |
| <input type="checkbox"/> Community Website | <input type="checkbox"/> Community Newsletter |
| <input type="checkbox"/> Posted Ad (in City Hall, Library) | <input type="checkbox"/> WIFA Newsletter |
| | <input type="checkbox"/> Flyers |





Step 4: Issue Request for Qualifications or Request for Proposal

After advertising the project, the community will circulate either a Request for Qualifications (RFQ) or Request for Proposals (RFP) to engineering firms.

The major difference between an RFP and an RFQ is the detail on the project and scope of work contained with an RFP. It is important to note that Arizona Law requires that the RFQ process or QBS (Qualifications Based Selection) be used by itself or preceding an RFP for projects *in excess of* \$500,000. An RFP process can be utilized by itself for projects that will be *less than* \$500,000.

Although it may seem advantageous to always obtain a price prior to selecting an engineering firm, there are situations in which this is not the case.

Situations where it may be advantageous to issue only an RFP include:

- The community has detailed the scope of work.
- The level of technical expertise required is low to moderate.
- The complexity of the project is low to moderate.
- The effort to complete the project is easily quantifiable.

Situations where it may be advantageous to only issue an RFQ include:

- The community has completed only a preliminary project scope of work.
- The level of technical expertise required is low to high.
- The project may have several stages requiring different technical expertise.
- The complexity of the project is low to high.
- The effort to complete the project may not be quantifiable at the RFQ stage.

Situations where it may be advantageous to issue an RFQ followed by an RFP:

- The level of technical expertise required is high.
- The project has a detailed scope of work.
- It is desirable to obtain qualifications from a wide variety of firms (through an RFQ) but price from only a few firms (through the subsequent RFP).

Please note that the intent of requesting the anticipated work effort in a RFP would be to consider it in the RFP evaluation process. It is important to ensure a fair comparison between the proposals. To objectively compare proposals, it is critical to prepare a detailed scope of work prior to issuing a RFP. Without the detailed scope of work, it would be difficult for engineering firms to determine exactly what items have been included in the work effort and





what will be considered extras that may significantly raise the anticipated work effort. In other words, the more detailed the scope work is, the more accurate the proposal will be.

Step 4A: Request for Qualifications (RFQ)

The RFQ is a request by the community for engineering firms to submit their Statement of Qualifications (SOQ).

An RFQ includes:

- ☐ Contact information
- ☐ Submittal information (due date, location)
- ☐ Description of the project
- ☐ Location of the project
- ☐ Purpose and objectives of the project
- ☐ Key schedule milestones
- ☐ Preliminary scope of work
- ☐ Request for key staff resumes
- ☐ Request for similar project experience
- ☐ Request for references from similar projects
- ☐ Request for engineering firm's current workload
- ☐ Request for company profile
- ☐ Grading/selection process for the project
- ☐ Funding sources being considered by the community to finance the project
- ☐ Standard contract terms and conditions (i.e. indemnification and insurance requirements)
- ☐ Insurance conditions
- ☐ Minority Business Enterprise/Women Business Enterprise (MBE/WBE) requirements
- ☐ SOQ format requirements (i.e. maximum length requirements, number of copies, etc.)

After engineering firms respond, the community will review the SOQ's and can develop a short list of preferred engineering firms. Based on the short list, the community can continue to evaluate firms by conducting interviews with the short-listed engineering firms. The community may then select an engineering firm based on the SOQ and interview. Alternatively, the community may issue a Request for Proposals (RFP) to the short-listed engineering firms to obtain more information on a firm's approach to the project.

Appendix C is a sample RFQ.

Step 4B: Request for Proposal (RFP)

As either an alternative to or in addition to the RFQ process, a community can request engineering firms to respond to an RFP. In this case the community sends the RFP to interested engineering firms or to firms the community short-listed based on a firm's SOQ. The community should have the RFP available after publishing the advertisement for the project.





An RFP should contain information about the project and requirements similar to an RFQ (see Step 4A above). Additionally, an RFP should include:

- ☐ Estimate of person-hours (labor) needed to complete the project
- ☐ Statement of the firm's technical approach to the project, including potential alternatives
- ☐ Detailed scope of work (replacing RFQ preliminary scope of work if preceded by an RFQ)

Appendix D is a sample RFP.

Step 5: Select Evaluation Committee

The community will create a selection committee to compare RFP responses based on predetermined evaluation criteria. Some recommended selection committee members include:

- ☐ Public Works Director
- ☐ City Engineering Firm
- ☐ Mayor
- ☐ Council Members
- ☐ Plant or Facility Operators
- ☐ City Manager
- ☐ Project Manager

Evaluation criteria may include the following:

- ☐ Firm's understanding of the project
- ☐ Firm's proposed approach to complete the project
- ☐ Experience of engineering firm
- ☐ Current/recent workload
- ☐ Office location
- ☐ Previous work done with the community
- ☐ Reference checks

Appendix E is a sample form to rank the engineering firms.

The community should check references to obtain information on other communities' experiences and satisfaction with a firm. **Appendix F** provides a list of useful questions that a community should ask while checking references.

Step 6: Select Engineering Firm

Direct Select – Based on the evaluation criteria, the community can select the engineering firm based on a SOQ or an RFP response.





OR

Short List and Interview – Based on the evaluation criteria, the community can develop a short list of the preferred engineering firms based on the SOQs or RFPs. From the short list, the community can continue the evaluation process by conducting interviews with the short-listed engineering firms. Interviews are useful prior to the final selection to ensure that the engineering firm understands the project and offers the community an opportunity to ask questions and discuss the firm’s approach, staff assignments, and other pertinent information.

Appendix G includes a list of sample interview questions.

Step 7: Meet with the Selected Engineering Firm

The community should coordinate with the engineering firm to develop a revised scope of work and to detail the tasks required to complete the project including content, work plans, costs, time-frames, etc. The revised scope of work should address the following:

- ☐ Schedule
- ☐ Estimated fee
- ☐ Hourly rates for staff
- ☐ Items the community must provide to facilitate the project
- ☐ Milestones (30, 60, 95% completion)

Step 8: Revise/Finalize Scope of Work and Contract

The community and engineering firm must first agree upon the scope of work for the project. Then the engineering firm finalizes the scope. If changes are made to the scope or contract, the engineering firm makes the changes and returns the changed contract to the community for their final acceptance. Most communities benefit from having an attorney involved in the negotiating process to protect their interests. The community, the community’s attorney, and the engineering firm should carefully review and understand the following contract terms and conditions:

- ☐ Finalized fee
- ☐ Finalized schedule
- ☐ Work to be performed by the engineering firm
- ☐ Services to be provided by the engineering firm
- ☐ Products to be provided by the engineering firm
- ☐ Items for which the community is responsible

If the community and engineering firm cannot agree on terms and conditions, the community should terminate (in writing) negotiations and initiate negotiations with the next qualified firm.





Step 9: Contract with the Engineering firm for Design and Project Bidding Assistance

A contract ensures that the engineering firm provides the services stated in their proposal for the stated price. The contract should state the specific work items to be performed, the time-frame in which they are to be performed, the compensation to be provided for successful completion of the project, and the liquidated damages to be imposed for unsuccessful completion or unreasonable delay. Generally, a written business contract includes:

- ☐ A description of the parties' duties and obligations
- ☐ Underlying facts or conditions vital to the project
- ☐ "Warranties," or promises that the product is fit for its intended purpose
- ☐ Conditions for terminating the contract or identifying specific breaches
- ☐ Ways to resolve disputes (for example, requiring arbitration or deciding upon a court's jurisdiction or which state's law should apply)
- ☐ Remedies for breaches

Appendix H includes a sample contract.



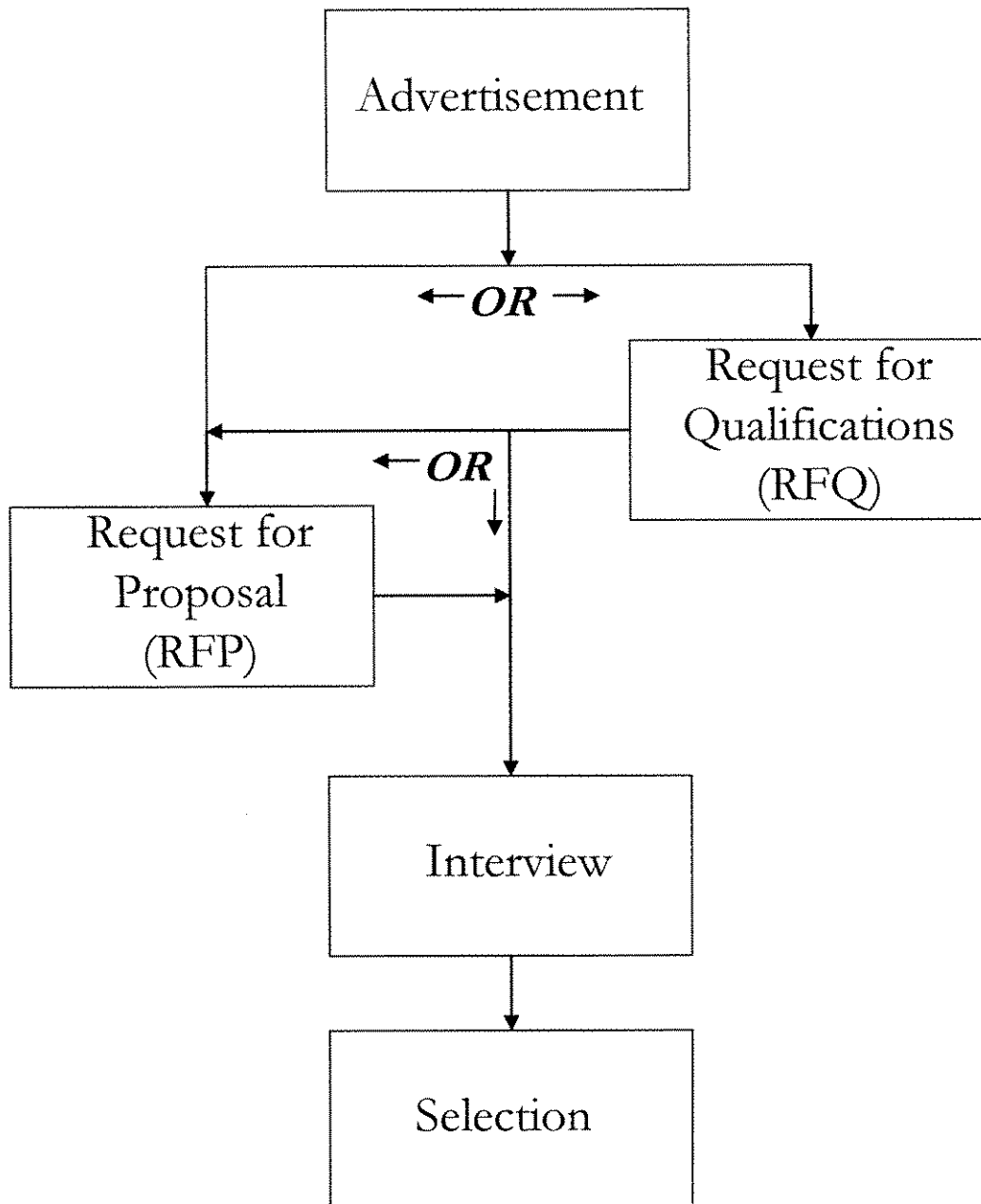
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APPENDIX A

Engineering Firm Selection Guide







APPENDIX B

Sample Project Advertisement





Sample Advertisement for Project

PUBLIC NOTICE

ENGINEERING FIRM CONSULTANTS

(Project Name) (RFP or RFQ) ##

Provide
Internal RFP
or RFQ

ENGINEERING FIRM CONSULTANTS: _____, Arizona is currently requesting (Request for Proposals or Request for Statements of Qualifications) from engineering firm consultants to provide engineering firm construction plans, specifications, bid documents, contract administration, and inspection services for one project consisting of _____

Provide brief project description, including:

- Description of the project
- Location of project
- Purpose of the project/What does project accomplish
- Selection process for the project

Request For (Request for Proposals or Request for Statements of Qualifications) packets may be obtained at (Location), through the (Title of Person or Department responsible for distribution of RFP or RFQ). All proposals must be received at (Location Name), (Street Address for Submittal), no later than (Time AM/PM), on (Day of Week), (Month, Date, Year).

The Town/City of _____ reserves the right to reject any or all (Request for Proposals or Request for Statements of Qualifications) received.

If you have any questions please contact (Name), at (Phone Number, Extension).

- ☐ Please publish in the (Date) issue of the (Local Newspaper)
- ☐ Post at library
- ☐ Post at municipal center's lobby bulletin board
- ☐ Post at community center
- ☐ Town council members; information copy
- ☐ Copy to town manager
- ☐ Copy to interested vendors
- ☐ Copy to responsible department heads
- ☐ Post on town's website
- ☐ Other

Possible notification
/ distribution
checklist





APPENDIX C

Sample Request for Qualifications (RFQ)





Sample Request for Qualifications

REQUEST FOR STATEMENT OF
INTEREST AND QUALIFICATIONS

(PROJECT NAME)

I. ENGINEERING FIRM SERVICES

The Town/City of _____, Arizona is soliciting Statements of Qualifications and Experience from consultants to provide engineering firm services in connection with _____.

Provide brief project description. The following items should be included:

- Description of the project
- Location of the project
- Purpose of the project/What does the project accomplish
- Selection process for the project

The scope of services will include but is not limited to studies, site investigations, planning, preliminary design, sketches, and contract development (preparing detailed plans, designs, assembly of specifications, and reports) scheduling, budget estimating, engineering firm designs phasing, and recommendations of future infrastructure needs.

SUBMITTAL REQUIREMENTS:

Interested firms should submit (Number of desired copies) copies of the Statement of Qualifications and Experience in order to be considered for the above referenced project. Please limit requested information to (Number of pages) pages.

A. Cover letter

B. Statements must include a cover sheet with the following information:

1. Project title: _____
2. Submitted to: City/town of _____
3. Submittal date and time: _____
4. Submitted by: Engineering firm or individual, (submitting) include address, contact person and phone number

C. Firm Capabilities – Provide a brief description of the firm including the number and types of personnel who would serve on projects. Limit responses to a maximum of # pages.

D. Staff qualifications (in house): Provide general or specific experience, certifications, licenses and memberships in professional associations, societies or boards. Provide resumes of personnel who will serve in key positions for projects, including specific experience for each person on relevant projects. Limit responses to a maximum of # pages.





- E. Firm experience on similar projects and local experience: Provide a list of firm's experience on relevant projects. Include references and telephone numbers. Limit responses to a maximum of # pages.

EVALUATION CRITERIA:

The evaluation criteria may include:

- Sample evaluation criteria. Assign percentages to each evaluation criteria based on the importance to the selection committee.

Personnel qualifications and pertinent experience ____%
Firm's relevant experience ____%
Understanding and approach to the community's specific project ____%
Local presence, availability capability and capacity ____%
Other factors ____%

The Statements of Qualifications and experience will be evaluated and a select number of the highest rated consultants may be invited to formally interview. The community will then select an engineering firm based on the SOQ and interview. Alternatively, the community may issue a request for proposal to the short-listed engineering firms. Following the review of the submitted proposals, the community may choose to interview the interested firms and make a final selection.

Additionally, a limited number of highly rated professional consultants will be selected for inclusion on the pre-qualified consultant shortlist. These lists are used to invite consultants to submit proposals to provide professional services on specific project assignments. Resulting contracts and selection lists usually remain active for at least one year.

SUBMITTAL TIME AND PLACE:

All statement of qualifications for this Project must be received by (Title of Recipient) , at (Location Name) , (Street Address for Submittal) , no later than (Time AM/PM) , on (Day of Week) , (Month, Date, Year) . The City/Town is not responsible for the pre-opening of, post opening of, or the failure to open, a proposal not properly addressed or identified.

A sample contract is attached as Appendix H.





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APPENDIX D

Sample Request for Proposal (RFP)



Sample Request for Proposals

REQUEST FOR PROPOSAL

(PROJECT NAME)

II. ENGINEERING FIRM SERVICES

PURPOSE:

The Town/City of _____, Arizona is requesting proposals from qualified engineering firm consultants for services in connection with (Provide brief project description).

SCOPE OF WORK:

The selected consultant will be expected to prepare all engineering firm plans, specifications, bid documents, and contracts, as well as oversee the bid process, contractor selection, and provide inspection services and construction oversight for _____

Provide project description. The following items should be included:

- Description of the project
- Location of project
- Purpose of the project/What the project accomplishes
- Selection process for the project

SPECIFICATIONS:

All plans and specifications shall comply with _____ standards and specifications. Where applicable, _____ Standards, and State and Federal Rules and Regulations shall be observed.

REQUIRED PRODUCTS:

The selected consultant shall prepare the documents indicated below: The Town/City of _____ requires a minimum of # copies for internal use. The consultant shall also be responsible for providing at cost, an undetermined number of copies of the Plans and Specifications to contractors for construction bidding purposes.

Engineering Firm Construction Plans

Written Specifications

Bid Documents

Construction Contract(s)

Preliminary Engineering Firm Reports

Environmental Studies/Assessments

Historic Preservation Plan





INSTRUCTIONS TO PROPOSERS:

Interested consultants shall submit # copies of their proposal in the format indicated below. The material shall be in sequence and contain the following:

A. Qualification of Firm:

1. General background information and specific background experience relating to scope of work
2. Scope of services the consultant offers as an engineering firm.
3. A list of three (3) references who can comment on the consultant's professional service capabilities. Name and phone number of individuals shall be included.
4. Any additional information reflecting on the consultant's ability to perform the task described herein.

B. Project Understanding and Approach: Provide understanding of the project and how the firm would approach each major task. Include description of examples of ingenuity and innovation the firm has employed in developing improvements to existing facilities.

C. Proposal Statement: A clear and concise statement indicating the services to be provided by your firm.

D. Project Schedule: Provide a detailed schedule indicating the start and anticipated completion date of the project.

PROPOSAL CRITERIA:

Each proposal submittal will be evaluated according to the following criteria:

(Percentage of evaluation)	(Criteria)
(%)	Experience and qualifications of the prime firm providing these services on similar projects.
(%)	Experience and qualifications of the project team members including sub-consultants.
(%)	Understanding of the project and how the firm would approach each major task.
(%)	Firm's manpower availability to meet multiple simultaneous projects.
(%)	Current/past projects with the City/Town of _____. List all projects awarded to your firm by the City/Town of _____ during the last three years.
(%)	Principal office location and local office work role.
(%)	Overall evaluation and opinion of the design team's capability to provide the required services.





SUBMITTAL REQUIREMENTS:

Firms interested in this project should submit a proposal which includes a one-page cover letter plus a maximum of # pages to address the proposal criteria (excluding resumes but including an organizational chart). Resumes for each key team member shall be limited to a maximum length of # pages and should be attached as an appendix to the proposal.

NOTICE TO ALL:

Firms seeking to provide services for the Town/City of _____ projects be advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:

- Receipt of submittal by the specified cut-off date and time (Arizona time, whether MST or PST)
- The number of originals and/or copies of the submittal specified
- Adherence to maximum page requirement
- Properly logged, "date-stamped", and the deposit of submittal in correct location

Adherence to the maximum page criterion is critical; each page side (maximum 8 ½" x 11") with criteria information will be counted. Pages that have photos, charts, and/or graphs will be counted towards the required number of pages.

All projects involving the preparation of design plans and specifications require those project documents to be sealed by a Professional Engineering firm registered in the State of Arizona in accordance with state law.

Additionally, a limited number of highly rated professional consultants will be selected for inclusion on the pre-qualified consultant shortlist. The community may then direct select an engineering firm based on the proposal, or they may conduct formal interviews with the short-listed firms prior to selection.

SUBMITTAL DEADLINE:

Proposals will be received by (Title of Recipient) , at (Location Name) , (Street Address for Submittal) , no later than (Time AM/PM) , on (Day of Week) , (Month, Date, Year) , and should be clearly marked, (RFP# or project name) on the envelope. At that time, proposals will be publicly opened. Proposals received after the time specified will be returned unopened. The Town/City of _____ reserves the right to reject any or all proposals.

Questions should be directed to (Name) , at (Phone Number, Extension) .

A sample contract is attached as Appendix H.





APPENDIX E

Sample Ranking Form





Project:	Firms			
<i>Date:</i>				
Evaluation Criteria*				
1. Understanding Problem: Firm's understanding of the objectives				
2. Qualifications: Specialized experience and technical competence to do the project				
3. Meet Time and Budget: Past record of performance with respect to cost control, quality of work, and ability to meet schedules				
4. Present and Projected Work Load: Conflicts that might affect the project				
5. Soundness of Approach: Technique of analysis, sequencing and method of management				
6. Location: Firms proximity and familiarity with the project area				
Total Points				

*Assign point values according to the importance of each factor to your community or district.





APPENDIX F

Sample Reference Check Questions





- Were you satisfied with the quality and timeliness of the work?
- Was the engineering firm assigned to your project knowledgeable about the funding program and the requirements you pursued?
- Was the engineering firm willing and able to work closely and effectively with your community?
- Were the costs and charges reasonable in relation to the work actually performed?
- Was the engineering firm able to meet the timeframe and schedules agreed upon in your contract?
- Did the engineering firm have other projects scheduled that caused time delays in your project?
- Did you experience any problems that would discourage you from hiring this engineering firm again?
- Did they assist with you grant application(s) to your funding source? Was that application successful?





APPENDIX G

Sample Interview Questions

Hiring an Engineering Firm Step-By-Step



- What experience does your firm have in working with communities such as ours?
- What other communities have you worked with in the state?
- Are you familiar with our situation and the local area to know some of the particular needs we have?
- What is the design philosophy of your firm? Are you willing to look at innovative and/or alternative designs?
- What do you see as your duty as part of this project? Are there specific or itemized services that you do not provide? Detail services you will provide in addition to design plans and specifications.
- Are you familiar with the various funding programs in the state for water/wastewater as they relate to communities/districts? What has been your experience in working with these funding agencies before? Has your firm assisted communities/districts with grant writing and the application preparation? What has been the success rate of those applications?
- Who specifically in your firm would be working directly with our board? Have they worked with other communities/districts?
- What other projects are you currently working on that could take precedence and time away from our project? Is your firm under any time constraints for this year?
- How much of the work on our project would be subcontracted?
- If we select your firm, would it be acceptable for the firm to accept liability for the design of the project? If so, what would you have to do to assume that liability?





APPENDIX H

Sample Contract





**CONSULTANT AGREEMENT
FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into effective this _____ day of _____, 20____,
between _____, of _____
(Client Name) (Address)
_____, hereinafter referred to as
“Client” and _____ (Name of Engineering Firm) of _____ (Address of Engineering Firm), hereinafter referred
to as “Consultant”.

Whereas, the Client desires to engage the services of a Consultant to _____
_____.

The Client and Consultant for mutual consideration hereinafter set forth, agree as follows:

I. OBJECTIVES AND SCOPE OF WORK

The Consultant agrees to perform certain consulting, design, advisory, and/or surveying services
for the Client as follows:

[Pick one or insert scope]

Per the attached Exhibit A (_____ pages) which is hereby made a part of this Agreement.

OR

Per the attached letter proposal dated _____, 1996 (____ pages) which is hereby made
a part of this Agreement.

II. PAYMENT

Client agrees to pay Consultant as compensation for these services as follows:

[Leave both in, just ☒ one (or both) depending on the job.]

☐ A lump sum amount of \$ _____.

☐ At hourly rates plus expenses per the attached and any subsequent Schedule of Billing
Rates for an estimated fee of \$ _____.

Work can begin on receipt of a retainer of \$ _____.

III. STANDARD PROVISIONS

The standard provisions set forth upon the reverse side hereof are incorporated into and made a
part of this Agreement. Consultant and Client also agree to the following additional provisions:

No further provisions.



Hiring an Engineering Firm Step-By-Step



(Name of Engineering Firm) _____

(Client)

By _____

By _____

Title _____

Title _____





STANDARD PROVISIONS

A. PAYMENT

The Consultant's expenses relate to those costs incurred for the Client's project including, but not limited to, necessary transportation costs including mileage at Consultant's current rate, meals and lodging, laboratory tests and analyses, computer services, telephone, printing, copying and binding charges. Reimbursement for these expenses shall be on the basis of 1.15 times actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by Consultant.

Technical or professional services provided by an outside source will be billed at 1.15 times the invoice amount.

Monthly invoices will be issued by Consultant for all work performed under the terms of this Agreement. If hourly, invoices will be based on labor and expenses incurred. If lump sum, invoices will be based on the percentage of work completed. Invoices are due and payable within thirty (30) days of date of invoice. Finance charges, computed by a "Periodic Rate" of 1-1/2 percent per month, which is an annual percentage rate of 18 percent (applied to the previous month's balance after deducting payments and credits for the current month), will be charged on all past-due amounts. Failure by the Client to remit payment or progress payments within sixty (60) days of date of invoice shall be sufficient reason for Consultant to stop work on the project and/or withhold delivery of completed work until payment is received of past-due invoiced amounts, finance charges, and any restart charges; and Consultant is satisfied further invoices will be paid within thirty (30) days of invoice. The Consultant may withhold delivery of any and all products until payment in full is received for said work.

The monthly invoices provided by the Consultant will outline the work performed to date and the charges for said work. In the event there is any dispute with regard to the invoice or billing by Client, such objection shall be forwarded in writing to Consultant within ten (10) days of the receipt of the invoice or the information contained in said invoice shall be conclusively presumed to be accurate and the Client agrees to pay according to its tenure.

The parties acknowledge and agree that any estimate of a total fee may not reflect the ultimate charges of Consultant. Each party recognizes the inherent difficulty in any predetermination of the amount of services required for a particular project.

If a retainer is received, it will be credited to the final invoice unless prior arrangement has been made between Client and Consultant.

Recognizing that factors beyond the control of the Consultant exist which require additional cost and effort of time, such as changing government regulations and procedures, permit and regulatory requirements, and level of analyses due to ever increasing standard of care and liability issues, the maximum amount of this contract may be increased an amount not to exceed five (5) percent per year upon documentation by the Consultant.

If at any time, present or future, the state or local government assesses a sale or use tax for any of the services performed by the Consultant and/or its sub-consultants under this Agreement, the Client agrees to directly pay such taxes, or should Consultant pay such taxes directly, then the Client agrees to reimburse Consultant in full. Such reimbursement shall be additional to the amount(s) specified in the Payment, Section II of this Agreement.

Consultant may elect to exercise its mechanics lien rights, under A.R.S. § 33-981 and following statutes and perfect such rights according to the provisions contained therein.

B. EXTRA WORK

The Client may desire to have the Consultant perform work or render services other than those provided in Objectives and Scope of Work, Section I of this Agreement. This will be Extra Work. Work shall not proceed until so authorized by the Client. Payment for all Extra Work performed under this Agreement shall be on an hourly basis plus expenses in accordance with the attached or any subsequent Schedule of Billing Rates. Charges for outside services, expenses, and sub-consultant work will be billed at 1.15 times the invoice amount.

If Extra Work should be requested by Client, such request shall be evidenced by a written supplement signed by Client authorizing the Extra Work. However, in the event that it is not practical for the parties to make a written supplement for the Extra Work, then the oral authorization of Client shall be sufficient to bind the Client to pay for Extra Work according to the Schedule of Billing Rates plus expenses.

C. TIME OF BEGINNING AND COMPLETION

Signing this form is authorization by the Client for the Consultant to proceed with the work.

D. DELAY OF PROJECT

If the project is delayed by any circumstance beyond the control of the Consultant for a period of thirty (30) days or longer during the progress of this work the contract amount will be increased by 10 percent or Ten Thousand Dollars (\$10,000), whichever is lesser, to cover the impact of archiving and restarting the work.

E. PROFESSIONAL STANDARDS

The Consultant shall be responsible, to the level of competency presently maintained by other practicing professionals in the same type of work in Consultant's community, for the professional and technical soundness, accuracy, and adequacy of all designs, drawings, specifications, and other work and materials furnished under this Agreement. The Consultant makes no other warranty, expressed or implied.

F. GOVERNING LAW AND VENUE

Unless otherwise provided, this Agreement shall be governed by the laws of the State of Arizona. Unless otherwise agreed, venue for any action shall be Maricopa County, Arizona.

G. SAFETY AND CONSTRUCTION

Consultant shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the contractor(s) and any subcontractors.

H. TERMINATION

Either the Client or the Consultant may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, Consultant shall forthwith be paid in full for all work authorized and performed prior to effective date of termination and all expenses incurred or committed to that cannot be canceled. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.

Consultant also has the right to complete, at Clients' expense, the tasks and records Consultant considers necessary to protect its professional reputation. A termination charge may also be made to cover administrative and incidental costs related to the work.

I. LEGAL RELATIONS

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be submitted for mediation prior to the commencement of other adjudicatory procedures.

This dispute resolution procedure shall be implemented in any matter by written notice given by any party to the other party or parties to this Agreement. The notice shall contain a statement of the nature of the dispute and the remedy sought. The parties shall make their principals available for a period of two (2) consecutive days during the thirty (30) days following the giving of notice of intent to mediate with the other parties in the dispute.

Unless agreed upon otherwise by the parties signatory to this contract, the location of the mediation shall be Phoenix, Arizona.

If a settlement is agreed upon through mediation, the parties may agree that the settlement be reduced to writing and that the mediator shall be deemed to be arbitrator for the sole purpose of signing that written settlement agreement which shall then have the same force and effect as an arbitral award.

In the event mediation fails, and legal action is brought by the Client or the Consultant against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, then the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses incurred in any action brought by either party under the terms of this Agreement.

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be governed by the laws of the State of Arizona.

The Client agrees to limit the Consultant's liability to the Client and to all construction contractors and subcontractors on the project, due to Consultant's professional negligent acts, errors or omissions such that the total aggregate liability of the Consultant to all those named shall not exceed the Consultant's total fee for services rendered on this project, or Fifty Thousand Dollars (\$50,000) whichever is lesser.

In the event the Client does not wish to limit the Consultant's liability, as stated, the Consultant will raise the limit to One Million Dollars (\$1,000,000) upon the Client's written request, provided the Client agrees to pay for this increase an additional consideration of five (5) percent of the total contract amount, or Five Hundred Dollars (\$500), whichever is greater.

J. COST ESTIMATES

Any cost estimates provided by the Consultant will be on a basis of experience and judgment, but since it has no control over market conditions or bidding procedures the Consultant cannot warrant that bids or ultimate construction costs will not vary from these cost estimates.

K. REUSE OF DOCUMENTS

All documents including reports, drawings and specifications prepared or furnished by the Consultant pursuant to this Agreement are instruments of service with respect to the project and the Consultant shall retain an ownership and property interest therein whether or not the project is completed. Such documents are not intended or represented to be suitable for use or reuse by the Client or others on the project, on extensions of the project, or on any other project without Consultant's participation. Any reuse without written verification or adaptation by the Consultant for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to the Consultant and the Client shall defend, indemnify and hold harmless the Consultant from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle the Consultant to further compensation at rates to be agreed upon by the Client and the Consultant.

L. SEVERABILITY

If any term, condition or provision of this Agreement or the application to any circumstances is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement shall not be affected, but shall instead remain valid and enforceable.

M. PUBLIC RECOGNITION

During development, construction, or upon completion of the project, the Consultant's name will be included on any public recognition/project identification display indicating design team, owners, and/or financiers.

N. COMPLETE AGREEMENT

This Agreement supersedes all verbal and other written understandings and agreements and constitutes the complete and final understanding between Client and Consultant.

